

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | File No.: EB-08-TC-6825 |
| |) | |
| Security First of Alabama, LLC |) | NAL/Acct. No.: 201132170017 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0020780128 |
| |) | |
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 12, 2011**Released: April 14, 2011**

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Security First of Alabama, LLC (“Security First”)¹ apparently willfully and repeatedly violated section 227 of the Communications Act of 1934, as amended (“Act”), and section 64.1200(a)(2) of the Commission’s rules, by delivering 43 unsolicited, prerecorded advertising messages, or “robocalls,” to 33 consumers.² Based on the facts and circumstances surrounding these apparent violations, we find that Security First is apparently liable for a forfeiture in the amount of \$342,000.

II. BACKGROUND

2. Section 227(b)(1)(B) prohibits any person from initiating “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission.”³ Section 64.1200(a)(2) of the Commission’s rules provides exemptions to the prohibition not only for emergency calls, but also for calls: 1) not made for a commercial purpose; 2) made for a commercial purpose but “not includ[ing] or introduc[ing] an unsolicited advertisement⁴ or constitut[ing] a telephone solicitation,”⁵ 3) made to any person “with whom the caller has an established

¹ Security First has offices at 4068 Crossings Lane, Birmingham, AL 35242, 2308 Colony Park Dr., Birmingham, AL 35243, and 622 Cahaba River Parc, Birmingham, AL 35243. Raul L. Baguer II is listed as contact person for Security First. Accordingly, all references in this NAL to “Security First” also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

² 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

³ 47 U.S.C. § 227(b)(1)(B).

⁴ An “unsolicited advertisement” is defined as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13).

⁵ A “telephone solicitation” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-

(continued....)

business relationship⁶ at the time the call is made,” or 4) “made by or on behalf of a tax-exempt nonprofit organization.”⁷

3. On November 26, 2008, in response to a consumer complaint alleging that Security First had delivered unsolicited, prerecorded advertising messages, the Enforcement Bureau (“Bureau”) issued a citation⁸ to Security First, pursuant to section 503(b)(5) of the Act.⁹ The Bureau cited Security First for delivering one or more unsolicited, prerecorded advertising messages for security alarm systems to residential telephone lines in violation of section 227 of the Act and section 64.1200(a)(2) of the Commission’s rules. The citation warned Security First that subsequent violations could result in the imposition of monetary forfeitures of up to \$16,000 per violation, and included a copy of the consumer complaint that formed the basis of the citation.¹⁰ The citation informed Security First that within 30 days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement responding to the citation. Security First did not respond to the citation.

4. Despite the citation’s warning that subsequent violations could result in the imposition of monetary forfeitures, we have received numerous additional consumer complaints indicating that Security First continued to deliver prerecorded advertising messages after issuance of the citation. In particular, we have received complaints by 33 consumers stating that Security First sent them 43 unsolicited, prerecorded advertising messages after the date of the citation.¹¹

III. DISCUSSION

A. Violations of the Commission’s Rules Restricting Unsolicited Prerecorded Messages

5. We find that Security First apparently violated section 227 of the Act and section 64.1200(a)(2) of the Commission’s rules by delivering 43 unsolicited, prerecorded advertising messages to the 33 consumers identified in the Appendix. According to the complaints, the prerecorded messages at issue here advertised Security First’s security alarm systems, and the complainants had not given

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exempt nonprofit organization.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(12). We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt[.]” *TCPA Revisions Report and Order*, 18 FCC Rcd 14097-98 (2003).

⁶ An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

⁷ 47 C.F.R. § 64.1200(a)(2).

⁸ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-08-TC-6825, issued to Security First on November 26, 2008.

⁹ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate, or other authorization issued by the Commission, or who are not an applicant for any of those listed instrumentalities, for violations of the Act or of the Commission’s rules and orders).

¹⁰ Commission staff mailed the citation to the following address: Security First of Alabama, Attn: Raul L. Baguer, 4068 Crossings Lane, Birmingham, AL 35242. See n.1, *supra*.

¹¹ See Appendix for a listing of the consumer complaints against Security First. In addition to complaints sent to this Commission, we have also included complaints submitted to the Federal Trade Commission and compiled on its Consumer Sentinel Network.

Security First permission to deliver the messages to them.¹² Therefore, the prerecorded messages at issue here fall within the definition of an “unsolicited advertisement.”¹³ Because the complaints indicate that Security First’s prerecorded messages were not made for any emergency or non-commercial purpose, on behalf of any tax-exempt nonprofit organization, or in the context of an established business relationship between the complainant and Security First, the messages fall outside the scope of any relevant exemption. Based on the entire record, we therefore conclude that Security First apparently violated section 227 of the Act and section 64.1200(a)(2) of the Commission’s rules by delivering 43 unsolicited, prerecorded advertising messages to 33 consumers.

B. Proposed Forfeiture

6. After we have first issued a citation to an entity, as we have in this case, section 503(b) of the Act authorizes the Commission to assess a forfeiture for each subsequent violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are to take into account “the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁴ The maximum penalty for a violation of section 227(b)(1)(B) by an entity such as Security First is \$16,000.

7. We find that Security First is apparently liable for a forfeiture in the amount of \$342,000. The Commission has previously considered \$4,500 per violation to be an appropriate base amount for sending unsolicited, prerecorded advertising messages.¹⁵ We apply that amount to 16 of the violations at issue here, which yields a total of \$72,000 for these particular violations.

8. The other 27 complaints present a troubling range of aggravating factors, and we therefore propose a higher base forfeiture for each of these violations. Although we have only listed calls with specific dates in the Appendix, some of the complainants claim that Security First called them many times.¹⁶ Complainants also charge Security First with a range of other abusive practices: calling phone numbers registered on the National Do Not Call Registry;¹⁷ providing an opt-out telephone number in the

¹² See, e.g., complaint dated July 14, 2010 from J. Stephens (stating that complainant had never done any business with the company, never made an inquiry or application to the company, and never gave permission for the company to make the call). The complainants involved in this action are listed in the Appendix below.

¹³ See 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13).

¹⁴ 47 U.S.C. § 503(b)(2)(D); *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

¹⁵ See *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23648, 23652 (2004) (first NAL to address pre-recorded advertising messages); see also *Septic Safety, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 2179 (2005); *Septic Safety, Inc.*, Forfeiture Order, 21 FCC Rcd. 6868 (2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 11852 (2006); *1 Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Forfeiture Order, 24 FCC Rcd 2888 (2009); *Media Synergy Group, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 10468, 10471 (2010).

¹⁶ See, e.g., complaint dated June 7, 2010 from E. Bishop (“This company has repeatedly called our home for MONTHS now.”)

¹⁷ See, e.g., complaint dated October 4, 2010 from J. Felock. The Commission’s rules prohibit the delivery of telephone solicitations to residential telephone numbers that are contained in the national Do-Not-Call Registry, except in limited situations. 47 C.F.R. § 64.1200(c)(2).

recorded message that was always busy or disconnected,¹⁸ failing to honor do-not-call requests that were made;¹⁹ and deliberately causing inaccurate telephone numbers to appear on consumer caller ID displays (“spoofing”), leading consumers to direct their opt-out requests and complaints to another, innocent company.²⁰ With respect to this latter abusive tactic in particular, we note that we have received a letter from Senator John McCain on behalf of Audio Visual Projection Services, which claims that Security First placed telemarketing calls that “spoofed” the company’s number on consumers’ caller ID displays with the result that the company’s office “has been bombarded with hundreds of phone calls everyday for the past week from irate people, demanding that we remove them from our call list.”²¹ These kinds of allegations indicate that Security First has been a particularly egregious distributor of prohibited prerecorded messages, and appear to warrant a more substantial penalty. The Commission has found that egregious violations, such as of national do-not-call and company specific do-not-call rules, justify a \$10,000 forfeiture per violation.²² We therefore apply that base amount to each of 27 apparent unsolicited, prerecorded advertising message violations associated with one or more aggravating factors, for a total of \$270,000 for these particular violations.

9. Combining the proposed forfeitures of \$72,000 for sixteen of the violations, and \$270,000 for the other twenty-seven violations, we propose a total forfeiture of \$342,000. Security First will have the opportunity to submit evidence and arguments in response to this *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed.²³

IV. CONCLUSION

10. We have determined that Security First of Alabama, LLC apparently violated section 227 of the Act and section 64.1200(a)(2) of the Commission’s rules by delivering 43 unsolicited, prerecorded advertising messages to the 33 consumers identified in the Appendix. We have further determined that Security First of Alabama, LLC is apparently liable for a forfeiture in the amount of \$342,000.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the rules, 47 C.F.R. § 1.80, that Security First of Alabama, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$342,000 for willful and repeated violations of section 227(b)(1)(B) of the Communications Act, 47 U.S.C. § 227(b)(1)(B), and section 64.1200(a)(2) of the rules, 47 C.F.R. § 64.1200(a)(2).

12. **IT IS FURTHER ORDERED THAT**, pursuant to section 1.80 of the Commission’s rules,²⁴ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*,

¹⁸ See, e.g., complaint dated July 3, 2010 J. Neidergeses (“The phone number given in their recording for one to call for their service, seems to always be busy.”), and complaint dated June 27, 2010 from S. Smith (“I tried to call back but received an odd tone and was disconnected; therefore I am unable to ask that they stop calling.”).

¹⁹ See, e.g., complaint dated April 11, 2010 from M. Strain (“I left multiple messages to take me off their calling list . . . but the calls continue.”).

²⁰ The Commission’s rules require that telemarketers transmit accurate caller ID information. 47 C.F.R. § 64.1601(e).

²¹ Letter from Audio Visual Projection Services, dated September 28, 2010, forwarded by letter from Senator John McCain to Kevin Washington, Acting Director of FCC Office of Legislative Affairs, dated October 8, 2010.

²² *Dynasty Mortgage, LLC*, Order of Forfeiture, 22 FCC Rcd 9453, 9469 (2007).

²³ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²⁴ 47 C.F.R. § 1.80.

Security First of Alabama, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Security First shall also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class mail to Security First of Alabama, LLC, Attention: Raul L. Baguer II, 4608 Crossings Lane, Birmingham, AL 35242, 2308 Colony Park Dr., Birmingham, AL 35243, and 622 Cahaba River Parc, Birmingham, AL 35243.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

| Complainants Who Received Unsolicited Prerecorded Messages | Violation Date(s) |
|---|--------------------------|
| J. Stephens | 7/14/2010 |
| B. Ruffer | 5/18/2010 |
| K. Brotherton | 5/17/2010 |
| T. Covington | 5/16/2010 |
| J. Crownover | 5/16/2010 |
| K. Reed | 5/16/2010 |
| C. Stephens | 5/15/2010 |
| T. Reid | 5/16/2010 |
| C. Stagg | 5/15/2010 |
| C. Parker | 5/15/2010 |
| C. Adams | 5/15/2010 |
| S. Reid | 5/14/2010 |
| J. Rusk | 5/11/2010 |
| T. Trammell | 5/10/2010 |
| H. Laney | 5/9/2010 |
| L. Keeton | 5/6/2010 |

| Complainants Who Received Unsolicited Prerecorded Messages and Also Received Incorrect Caller ID or Other Inadequate Opt-Out Information, And/Or Made Opt-Out Requests That Were Not Honored | Violation Date(s) |
|---|--|
| J. Felock | 9/29/2010 |
| M. Conaway | 9/27/2010 |
| B. Griffin | 11/20/2010 |
| E. Bishop | 6/7/2010 |
| D. Baker | 9/30/2010 |
| L. Henson | 7/23/2010; 7/25/2010 |
| S. Cameron | 7/3/2010 |
| B. Ball | 7/1/2010 |
| S. Smith | 6/27/2010 |
| E. Bishop | 6/7/2010 |
| D. Hunt | 6/15/2010 (2 calls) |
| J. Anderson | 5/25/2010 (2 calls) |
| C. Bazela | 5/25/2010 |
| L. Allen | 5/22/2010 |
| R. Marks | 5/21/2010 (3 calls) |
| M. Ham | 5/2/2010; 5/6/2010; 5/7/2010; 5/9/2010; 5/12/2010; 5/17/2010 |
| G. Griner | 5/16/2010 |